

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF
AMERICA,

Plaintiff,

v.

STEVEN ZAGORIA,

Defendant.

:

:

:

:

:

:

CRIMINAL ACTION NO.

1:10-CR-00373-MHS

ORDER

This matter is before the Court on the Magistrate Judge's Report and Recommendation ("R&R") and defendant's objections thereto. For the following reasons, the Court overrules defendant's objections and adopts the R&R.

In the R&R, Magistrate Judge E. Clayton Scofield III recommends that defendant Steven Zagoria's motion under 28 U.S.C. § 2255 to alter the restitution portion of his sentence and his "Request to the Court to Proceed with § 2255 or to Dismiss Without Prejudice" both be denied.

Defendant's first objection is that "he has never raised an appeal to the Eleventh Circuit on any point of law or the Judgment." Def.'s Objs. at 1. However, defendant's claim is belied by the notice of appeal that he filed on August 8, 2011, [#23] appealing the restitution owed and the Court's Order denying defendant's motion to correct his sentence pursuant to Fed. R. Civ. P. 60(b). Defendant also filed an affidavit accompanying a motion for permission to appeal in forma pauperis on September 12, 2011 [#31]. On January 26, 2012, the Eleventh Circuit Court of Appeals denied defendant's motion for leave to proceed on appeal in forma pauperis [#38] because the appeal was frivolous. On February 24, 2012, the Eleventh Circuit dismissed defendant's appeal [#43] for want of prosecution.

Defendant's second objection to the R&R is "based upon the fact that [he] has never received any objections from the Government in this matter, nor even notice from the Magistrate to the Government as to when objections had to be filed." Def.'s Obj. at 1-2. This appears to be a complaint that Magistrate Judge Scofield did not require the government to respond to defendant's § 2255 motion. However, Magistrate Judge Scofield determined that a response from the government was unnecessary in this case because it

plainly appeared from defendant's § 2255 motion that he was not entitled to relief. See 28 U.S.C. foll. § 2255, Rules 4(a) & 5(a) ("The respondent is not required to answer the motion unless a judge so orders.").

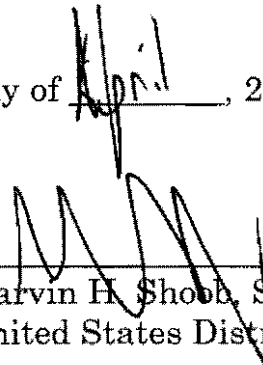
Additionally, the Court notes that defendant stated that he would "within 7 days file a brief of law for the Court." Def.'s Objs. at 2. As of April 2, 2012, defendant has not filed any further briefs or motions.

Therefore, the Court finds that defendant's objections are without merit and overrules them. After a de novo review of the record, the Court concludes that the R&R is correct.

Accordingly, the Court OVERRULES defendant's objections [#42]; ADOPTS the Magistrate Judge's R&R [#41]; DENIES defendant's § 2255 motion to vacate, set aside, or correct his sentence [#27]; DENIES AS MOOT defendant's motion to proceed with his § 2255 motion or dismiss without prejudice [#40]; and DECLINES to issue a certificate of appealability.

Because the issues defendant raised in his § 2255 motion mirror issues that he raised earlier in this case, which the Court already determined to be frivolous, see Order dated September 26, 2011 [#32], the Court again CERTIFIES that an appeal in this case would not be taken in good faith and that defendant is not entitled to proceed in forma pauperis on appeal. See 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a).

IT IS SO ORDERED, this 2 day of April, 2012.



Marvin H. Shook, Senior Judge
United States District Court